THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 20th September, 2006

W.P.No.11578 of 2004

Between:

B. Subrahmanyam … Petitioner

and

The District Collector,
Nellore & others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.11578 of 2004

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Order of the 1st respondent in D.Dis.(E)661/2003, dated 12-6-2004, wherein the Orders of the 2nd respondent in D.Dis.(E)1471/2002, dated 29-10-2003 and the 3rd respondent in Rc.J.2740/2001, dated 18-3-2003 were confirmed, as arbitrary and illegal.

Heard both sides.

There is no necessity of going into all the details. It appears that the authorization held by the petitioner against Fair Price Shop No.27 of Vidavalur village and Mandal, Nellore District was suspended on 23-1-2002. However, that was not communicated to the petitioner and he was denied supply of essential commodities. Under those circumstances, he filed Writ Petition No.11782 of 2002 and this Court directed the authorities to supply the essential commodities so long as the authorization of the petitioner is subsisting. However, the suspension order dated 23-1-2002 was served on the petitioner on 3-7-2002 along with a show cause notice to explain as to why his authorization should not be cancelled for the irregularities mentioned therein. While the matter stood thus, the petitioner filed another Writ Petition being W.P.No.23465 of 2002 seeking a Mandamus to declare the action of the Revenue Divisional Officer, Kavali in continuing the authorization of the petitioner under prolonged suspension as arbitrary and illegal. The said Writ Petition was allowed on 28-11-2002 treating

the suspension of dealership of the petitioner ceased to be in force and he shall be entitled to function as a fair price shop dealer and he shall be supplied with essential commodities. However, it was made clear that the said Order would be subject to the outcome of the Proceedings before the Revenue Divisional Officer. Thereafter, when no action was taken, the petitioner issued a legal notice on 27-1-2003. A reply was given by the Department stating that against the Orders in Writ Petition No.23465 of 2002, a Writ Appeal has been filed and till the disposal of the Writ Appeal, they may not take any action. However, even before the disposal of the Writ Appeal, on 18-3-2003 the impugned order of cancellation of authorization was passed by the 3rd respondent-Revenue Divisional Officer, according to the petitioner, without issuing any notice in this regard. The cancellation was on two grounds, viz., that the petitioner was involved in a criminal case and he was also convicted in the Proceedings under Section 6-A of the Essential Commodities Act,1955 (for short 'the Act') before the 2nd respondent-Joint Collector. Assailing the cancellation order, he filed an appeal before the 2nd respondent-Joint Collector and further, revision before the 1st respondent-District Collector unsuccessfully. Aggrieved by the same, the present Writ Petition is filed.

It is the contention of learned counsel for the petitioner that insofar as criminal case is concerned, it arose out of private life of the petitioner, which ended in acquittal. Insofar as the proceedings under Section 6-A of the Act is concerned, when the matter was taken in appeal before the learned Sessions Judge at Nellore, it was held that the order of confiscation made by the Joint Collector insofar as rice, sugar and 15 litres of kerosene oil is concerned, it was illegal and the same was set aside; however, the order of the Joint Collector was

confirmed insofar as confiscation of 29 litres of kerosene oil is concerned. Further, it was made clear that the petitioner herein is entitled to refund of the value corresponding to the stocks confiscated i.e. rice, sugar and 15 litres of kerosene oil. Learned counsel also contends that the 1st respondent-District Collector did not take into consideration the acquittal of the petitioner in Sessions Case No.38 of 2003 on the file of the learned Special Judge for Trial of Offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Nellore while passing the impugned Order. Respondent No.1 has also not taken into consideration the proceedings under Section 6-C of the Act, which were concluded on 19-3-2004 in Criminal Miscellaneous Appeal No.73 of 2002 on the file of the learned Sessions Judge, Nellore, though it was brought it his notice.

In view of the above, without going into other merits, since the said two Orders – one passed by learned Special Judge for Trial of Offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Nellore in Sessions Case No.38 of 2003 and the other passed by the learned Sessions Judge, Nellore in Crl.Misc.Appeal No.73 of 2002 – were not taken into consideration by the 1st respondent, the impugned Order passed by the 1st respondent is set aside and the 1st respondent is directed to pass appropriate orders, taking into consideration the said two Judgments and also keeping in view the proviso to clause 5(4) of the Andhra Pradesh State Public Distribution System Control Order,2001, within a period of two months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No order as to costs.

20-9-2006

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